

1 28. Plaintiff/Petitioner MERRILEE DAVIES is a resident and registered voter of  
2 Tulare County, California.

3 29. Plaintiff/Petitioner BERNICE M. KANDARIAN is a resident and registered  
4 voter of Santa Clara County, California. Ms. Kandarian has low vision. Ms. Kandarian is  
5 the President of the Council of Citizens with Low Vision International.

6 30. Plaintiff/Petitioner VICTORIA POST is a resident and registered voter of San  
7 Francisco County, California. Ms. Post is also blind.

8 31. Plaintiff/Petitioner VERONICA ELSEA is a resident and registered voter of  
9 Santa Cruz County, California. Ms. Elsea is also blind.

10 32. Defendant/Respondent BRUCE MCPHERSON is the Secretary of State of  
11 California and the Chief Elections Officer for the state.

12 33. Defendant/Respondent ELAINE GINNOLD is the Acting Registrar of Voters for  
13 the County of Alameda and is responsible for conducting statewide primary and statewide  
14 general elections in that county. On information and belief, Alameda County intends to use  
15 Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

16 34. Defendant/Respondent VICTOR E. SALAZAR is the Registrar of Voters for the  
17 County of Fresno and is responsible for conducting statewide primary and statewide general  
18 elections in that county. On information and belief, Fresno County intends to use Diebold  
19 AV-TSx touchscreen systems in upcoming 2006 elections.

20 35. Defendant/Respondent CAROLYN WILSON CRNICH is the Registrar of Voters  
21 for the County of Humboldt and is responsible for conducting statewide primary and  
22 statewide general elections in that county. On information and belief, Humboldt County  
23 intends to use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

24 36. Defendant/Respondent ANN BARNETT is the Registrar of Voters for the County  
25 of Kern and is responsible for conducting statewide primary and statewide general elections  
26 in that county. On information and belief, Kern County intends to use Diebold AV-TSx  
27 touchscreen systems in upcoming 2006 elections.

28 37. Defendant/Respondent THERESA NAGEL is the County Clerk for the County of

1 Lassen and is responsible for conducting statewide primary and statewide general elections  
2 in that county. On information and belief, Lassen County intends to use Diebold AV-TSx  
3 touchscreen systems in upcoming 2006 elections.

4 38. Defendant/Respondent CONNIE MCCORMACK is the County Clerk for the  
5 County of Los Angeles and is responsible for conducting statewide primary and statewide  
6 general elections in that county. On information and belief, Los Angeles County intends to  
7 use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

8 39. Defendant/Respondent MICHAEL SMITH is the Registrar of Voters for the  
9 County of Marin and is responsible for conducting statewide primary and statewide general  
10 elections in that county. On information and belief, Marin County intends to use Diebold  
11 AV-TSx touchscreen systems in upcoming 2006 elections.

12 40. Defendant/Respondent MARSHA WHARFF is the County Clerk for the County  
13 of Mendocino and is responsible for conducting statewide primary and statewide general  
14 elections in that county. On information and belief, Mendocino County intends to use  
15 Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

16 41. Defendant/Respondent MAXINE MADISON is the County Clerk for the County  
17 of Modoc and is responsible for conducting statewide primary and statewide general  
18 elections in that county. On information and belief, Modoc County intends to use Diebold  
19 AV-TSx touchscreen systems in upcoming 2006 elections.

20 42. Defendant/Respondent JIM MCCAULEY is the County Clerk for the County of  
21 Placer and is responsible for conducting statewide primary and statewide general elections in  
22 that county. On information and belief, Placer County intends to use Diebold AV-TSx  
23 touchscreen systems in upcoming 2006 elections.

24 43. Defendant/Respondent KATHLEEN WILLIAMS is the Registrar of Voters for  
25 the County of Plumas and is responsible for conducting statewide primary and statewide  
26 general elections in that county. On information and belief, Plumas County intends to use  
27 Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

28 44. Defendant/Respondent MIKEL HASS is the Registrar of Voters for the County

1 of San Diego and is responsible for conducting statewide primary and statewide general  
2 elections in that county. On information and belief, San Diego County intends to use  
3 Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

4 45. Defendant/Respondent DEBORAH HENCH is the Registrar of Voters for the  
5 County of San Joaquin and is responsible for conducting statewide primary and statewide  
6 general elections in that county. On information and belief, San Joaquin County intends to  
7 use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

8 46. Defendant/Respondent JULIE RODEWALD is the County Clerk for the County  
9 of San Luis Obispo and is responsible for conducting statewide primary and statewide  
10 general elections in that county. On information and belief, San Luis Obispo County intends  
11 to use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

12 47. Defendant/Respondent JOSEPH E. HOLLAND is the County Clerk for the  
13 County of Santa Barbara and is responsible for conducting statewide primary and statewide  
14 general elections in that county. On information and belief, Santa Barbara County intends to  
15 use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

16 48. Defendant/Respondent COLLEEN BAKER is the County Clerk for the County of  
17 Siskiyou and is responsible for conducting statewide primary and statewide general elections  
18 in that county. On information and belief, Siskiyou County intends to use Diebold AV-TSx  
19 touchscreen systems in upcoming 2006 elections.

20 49. Defendant/Respondent DERO B. FORSLUND is the County Clerk for the  
21 County of Trinity and is responsible for conducting statewide primary and statewide general  
22 elections in that county. On information and belief, Trinity County intends to use Diebold  
23 AV-TSx touchscreen systems in upcoming 2006 elections.

24 50. Defendant/Respondent JERRY T. MESSINGER is the Registrar of Voters for the  
25 County of Tulare and is responsible for conducting statewide primary and statewide general  
26 elections in that county. On information and belief, Tulare County intends to use Diebold  
27 AV-TSx touchscreen systems in upcoming 2006 elections.

28 51. All Defendants/Respondents, apart from the Secretary of State, are referred to

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1 herein collectively as the “County Elections Officials.”

2 52. Petitioners are unaware of the true names and capacities of the individuals sued  
3 herein as Does 1 through 50, inclusive, and therefore sue these Defendants/Respondents by  
4 such fictitious names pursuant to Code of Civil Procedure Section 474. Petitioners will  
5 amend this Petition to state the true names and capacities of such fictitiously named  
6 Defendants/Respondents when ascertained. Petitioners are informed and believe, and on  
7 that basis allege, that the Defendants/Respondents fictitiously named as Does 1 through 25  
8 are County Elections Officials from California counties who seek to purchase or use Diebold  
9 Voting Systems in California elections and/or are failing or threatening to fail their election  
10 audit responsibilities under Elections Code 153600. Petitioners are informed and believe,  
11 and on that basis allege, that the Defendants/Respondents fictitiously named as Does 26  
12 through 50 are also in some manner connected with the matters alleged herein and similarly  
13 subject to the relief requested herein.

14  
15 **JURISDICTION AND VENUE**

16 53. Petitioners bring this action for mandamus pursuant to Elections Code Section  
17 13314(a) and/or Code of Civil Procedure Section 1085, for administrative mandamus  
18 pursuant to Code of Civil Procedure Section 1094.5, for declaratory relief pursuant to Code  
19 of Civil Procedure Section 1060 and Government Code Section 11350, and for injunctive  
20 relief pursuant to Civil Code Sections 3420 through 3422. This Court has jurisdiction over  
21 actions arising under California law.

22 54. Pursuant to Elections Code Section 13314(b)(1) and Code of Civil Procedure  
23 Section 393, venue in this action is proper in Sacramento County. However, “whenever it is  
24 provided by any law of this State that an action or proceeding against the State or a  
25 department, institution, board, commission, bureau, officer or other agency thereof shall or  
26 may be commenced in, tried in, or removed to the County of Sacramento, the same may be  
27 commenced and tried in any city or city and county of this State in which the Attorney  
28 General has an office.” Code Civ. Proc. §401(1). *See Harris v. Alcoholic Beverage Control*

1 *Appeals Board*, 197 Cal. App. 2d 759, 762 (1961). The State Attorney General has an  
2 office located at 455 Golden Gate Avenue, #11000, San Francisco, 94102. Thus, venue in  
3 this action is proper in the County of San Francisco.

4  
5 **COMMON ALLEGATIONS**

6 **I. THE EVOLUTION OF LEGAL REQUIREMENTS**  
7 **RELATING TO USE OF ELECTRONIC VOTING MACHINES**  
8 **IN CALIFORNIA ELECTIONS.**

9 **A. Federal Requirements.**

10 55. The chaos of the Florida recount in the 2000 Presidential election raised public  
11 consciousness about the need to modernize the nation’s voting technology. Although media  
12 attention largely focused on punch card voting systems, which are now rarely used in  
13 California, Diebold’s machinery also experienced a massive malfunction in Florida. At one  
14 point, a memory card in a Diebold system registered *negative* 16,022 votes for Al Gore. The  
15 malfunction led many news organizations to call the election prematurely. Elections  
16 officials eventually decided that a hand recount of the system’s paper ballots was the only  
17 way to determine the true vote count.

18 56. In the debate that followed Florida’s election problems, concerns were voiced  
19 about many aspects of the voting process including convenience, auditability, vote security  
20 and accessibility for the disabled. The federal government weighed in with new  
21 legislation—the Help America Vote Act of 2002—that required states to provide voting  
22 systems accessible to the disabled and provided federal funds for their acquisition.

23 57. In April 2002, the Federal Election Commission (“FEC”) promulgated the  
24 voluntary *Voting Systems Performance and Test Standards* (“2002 Standards”). Those  
25 revised standards, which replaced earlier standards from 1990, provide guidance for the use  
26 of new technologies, most notably Direct Recording Electronic (“DRE”) devices. DREs,  
27 often referred to as touchscreens, record votes electronically. A true and correct copy of  
28 relevant pages from the 2002 Standards is included as Exhibit I in the Appendix In Support  
Of Verified Petition For Writ Of Mandate, Declaratory And Injunctive Relief (the

1 “Appendix”) which is being filed concurrently with this Petition and is incorporated herein  
2 and its contents verified by reference.

3  
4 **B. California Laws Protecting The Integrity Of California Elections.**

5 58. California has taken additional steps to attempt to ensure that new voting  
6 technologies will continue to guarantee the integrity of votes in California elections.

7 (a) *First*, California made compliance with the voluntary federal standards for  
8 electronic voting machines mandatory. *See* Elec. Code §§19250(a-b), 19251(d). Under  
9 Elections Code Section 19250(a), the Secretary of State cannot approve a voting system  
10 unless it has received “federal qualification.” “Federal qualification” means the system is  
11 *both* approved by an independent testing authority (“ITA”) *and* meets or exceeds the  
12 voluntary standards set by the Federal Election Commission. Elec. Code §19251(d).

13 (b) *Second*, California passed legislation to ensure that DREs would have a  
14 “voter-verified paper audit trail” that would serve as the official record of the vote in a  
15 disputed election. *See* Elec. Code §§19250(a-b), 19251(c), 19253.

16 (c) *Third*, California passed legislation requiring that the contents of a DRE  
17 paper audit trail be “accessible” to visually impaired voters. *See* Elec. Code §§19250(a-b),  
18 19251(a). To be considered “accessible,” the contents of the paper trail must be “provided  
19 or conveyed to voters via *both* a visual *and* a nonvisual method.” Elec. Code §19251(a)  
20 (emphasis added).

21 59. The California Secretary of State is charged with enforcing the Elections Code  
22 and is responsible for certifying whether a voting system meets all the requirements of the  
23 Elections Code. Gov’t Code §12172.5. The Secretary of State cannot approve a voting  
24 system or part of a voting system “unless it fulfills the requirements of this code and the  
25 regulations of the Secretary of State.” Elec. Code §19200.

26 60. The Secretary of State is responsible for establishing “the specifications for and  
27 the regulations governing” voting systems. Elec. Code §19205. The specifications and  
28 regulations must ensure that the system is “suitable for the purpose for which it is intended”

1 and is “safe from fraud or manipulation.” *Id.*

2 61. County Elections Officials must follow both valid regulations of the Secretary of  
3 State and the general mandates of the Elections Code. *See* Elec. Code §§19201(b),  
4 19250(b), Gov’t Code §26802. Counties cannot use voting systems “unless [the voting  
5 system] has received the approval of the Secretary of State prior to any election at which it is  
6 to be first used.” Elec. Code §19201(a). They also cannot “purchase or contract for a voting  
7 system, in whole or in part, unless it has received the approval of the Secretary of State”  
8 (Elec. Code §19201(b)) and met the requirements for federal qualification. Elec. Code  
9 §§19250(b), 19251(d).

10  
11 **II. THE DUBIOUS HISTORY OF DIEBOLD VOTING**  
12 **SYSTEMS IN CALIFORNIA AND ELSEWHERE.**

13 **A. California’s Disastrous Experiment With Diebold Voting Systems In The**  
14 **March 2004 Primary Results In Decertification Of The AV-TSx.**

15 62. Diebold marketed and sold its systems—including an earlier version of the AV-  
16 TSx touchscreen at issue here—in California for use in the 2004 elections.

17 63. Based on representations from Diebold that federal qualification was imminent  
18 and that Diebold would comply with certain conditions, the Secretary of State conditionally  
19 certified the AV-TSx on November 20, 2003.

20 64. On February 11, 2004, the Secretary of State asked Diebold to implement two  
21 safeguards to its systems before the March 2004 primary election. First, Diebold was  
22 required to print an image of each of the ballots cast. Second, Diebold was required to  
23 provide voters an option of using a paper ballot.

24 65. During the March 2004 primary election, Diebold voting systems experienced  
25 operating problems which severely curtailed voting in San Diego County and significantly  
26 affected voting in Alameda County. In a special report on the March 2004 elections, the  
27 Secretary of State concluded that:

28 (a) Diebold neither alerted elections officials about this equipment problem, nor  
did it indicate to counties that additional poll worker training or documentation was

1 necessary to address this problem. Diebold's own investigation report concedes that its  
2 equipment created the problem, not poll worker error.

3 (b) The net effect was that the problems with the equipment, together with a  
4 lack of documentation and training by the vendor about how to resolve the problem, led to a  
5 "worst case scenario" in San Diego County, and serious difficulties in Alameda County.  
6 Most polling places had only one PCM machine. Therefore, when the device failed, there  
7 were no means for voters to access and use the touchscreen machines in that polling place.

8 (c) Without access to the touchscreens, voters could not vote. This was  
9 because San Diego County, despite repeated recommendations from the Secretary of State's  
10 office, failed to provide back-up paper ballots at polling places. Over half of San Diego's  
11 polling places could not open on time as a result of the equipment failure and the failure to  
12 provide back-up paper ballots. Voters were turned away or sent to other polling places to  
13 vote provisionally. Presumably, some of these voters cast their ballots later in the day. There  
14 was no way to estimate the number of voters who failed to return to the polls after being  
15 turned away.

16 Office of the Secretary of State's Report on the March 2, 2004 Statewide Primary Election  
17 (April 2004), at 5. A true and correct copy of this report is included in the Appendix as  
18 Exhibit 2.

19 66. Later investigations revealed that some of the problems were traceable to last-  
20 minute changes Diebold made to the voting systems.

21 67. On April 20, 2004, the Secretary of State's staff issued a staff report highly  
22 critical of Diebold. A true and correct copy of the staff report is included in the Appendix as  
23 Exhibit 3. The report concluded that Diebold:

24 (a) marketed and sold the AV-TSx system before it was fully functional, and  
25 before it was federally qualified;

26 (b) misrepresented the status of the AV-TSx system in federal testing in order  
27 to obtain state certification;

28 (c) failed to obtain federal qualification of the AV-TSx system despite

1 assurances that it would;

2 (d) failed even to pursue testing of the firmware installed on its AV-TSx  
3 machines in California until only weeks before the election, choosing instead to pursue  
4 testing of newer firmware that was even further behind in the ITA testing process and that,  
5 in some cases, required the use of other software that also was not approved in California;

6 (e) installed uncertified software on election machines in 17 counties;

7 (f) sought last-minute certification of allegedly essential hardware, software  
8 and firmware that had not completed federal testing; and

9 (g) in doing so, jeopardized the conduct of the March 2004 Primary. Ex. 3 at 5.

10 68. Citing Diebold's misconduct as outlined in the April 20, 2004, staff report, then-  
11 Secretary of State Kevin Shelley decertified the AV-TSx machines.

12 69. Secretary of State Shelley also asked the California Attorney General's office to  
13 consider bringing criminal fraud charges against Diebold. The Attorney General launched a  
14 criminal investigation but later decided to intervene in a civil False Claims Act lawsuit  
15 against Diebold. Diebold paid \$2.6 million to settle the claim.

16  
17 **B. Numerous Studies of Diebold Products By Other States Show Widespread**  
18 **Security Flaws And Problems.**

19 70. The Johns Hopkins University Study. On July 23, 2003, four computer scientists,  
20 three from the faculty of Johns Hopkins University and the fourth from the faculty of Rice  
21 University, published "An Analysis of an Electronic Voting System." The article reported  
22 on their analysis of the source code for the Diebold AccuVote-TS voting terminal, which is  
23 the predecessor of the AV-TSx. The authors concluded that "this voting system is far below  
24 even the most minimal security standards applicable in other contexts." They highlighted  
25 several issues including "unauthorized privilege escalation, incorrect use of cryptography,  
26 vulnerabilities to network threats, and poor software development processes." A true and  
27 correct copy of the Johns Hopkins report is included in the Appendix as Exhibit 4.

28 71. The Science Application International Corporation ("SAIC")/Maryland Study.

1 On September 2, 2003, Science Application International Corporation (“SAIC”) issued a  
2 “Risk Assessment Report: Diebold AccuVote-TS Voting System and Processed”  
3 commission by the Governor of the State of Maryland. The report identified 328 security  
4 flaws, 26 of them “critical” and concluded that “[t]he system, as implemented in policy,  
5 procedure, and technology, is at high risk of compromise.” A true and correct copy of the  
6 SAIC report is included in the Appendix as Exhibit 5.

7 72. The Nevada Study. In a report to the Nevada Secretary of State dated November  
8 26, 2003, the Chief of the Nevada Gaming Control Board’s Electronic Services Division  
9 concluded that “the Diebold electronic voting machine, operating on the software analyzed  
10 in the Johns Hopkins report and the SAIC Risk Assessment Report, represents a legitimate  
11 threat to the integrity of the election process” and recommended against its use in Nevada.  
12 A true and correct copy of the Nevada Study is included in the Appendix as Exhibit 6.

13 73. The Compuware/Ohio Study. On December 2, 2003, the Ohio Secretary of State  
14 released a “DRE Technical Security Assessment” prepared by a private firm, Compuware  
15 (the “Compuware Report”). The report assessed touchscreen voting systems sold by  
16 Diebold and three other vendors. It found the Diebold AV-TS voting system had more  
17 security risks rated “high” than any other vendor. It stated that the same PIN—1111—was  
18 used on all supervisor smart cards issued nationwide, and that an unauthorized person could  
19 use it to gain access to supervisor functions on the voting terminal. The report also found  
20 that an unauthorized person could use the widely available Microsoft Access database  
21 program to change ballot definition files and election results in the Diebold GEMS software.  
22 A true and correct copy of the Compuware Report is included in the Appendix as Exhibit 7.

23 74. The RABA Technologies/Maryland Study. On January 20, 2004, the Maryland  
24 Department of Legislative Services released a report on Diebold product security entitled  
25 “Trusted Agent Report: Diebold AccuVote-TS Voting System,” prepared by RABA  
26 Technologies LLC (the “RABA Report”). The RABA team, which included two prominent  
27 computer security professors and several former National Security Agency and Central  
28 Intelligence Agency computer security experts, identified numerous security vulnerabilities

1 in the Diebold GEMS tabulation software and server and in the “smart” memory cards used  
2 with the AV-TS and -TSx systems. These security vulnerabilities were confirmed and  
3 demonstrated in a single day under election day conditions after a single week of analysis  
4 and preparation by this small team of computer security experts. A true and correct copy of  
5 the RABA Report is included in the Appendix as Exhibit 8.

6  
7 **C. Computer Expert Harry Hursti’s “Exploits” Demonstrate Vulnerabilities In**  
8 **The Diebold Voting System And Expose Diebold Misrepresentations.**

9 75. In May 2005, computer security expert Harri Hursti demonstrated the existence  
10 of several security vulnerabilities in the memory cards used in a Diebold system installed in  
11 Leon County, Florida. Diebold’s systems use memory cards to customize ballots for a  
12 particular election and to store the voting results.

13 76. Using an actual Diebold AV-OS machine, Hursti performed several “exploits”  
14 that allowed him to control vote totals and other aspects of voting machine performance,  
15 without being detected in a later canvass, by manipulating the code on the Diebold memory  
16 cards. Hursti documented these exploits in a report dated July 4, 2005. A true and correct  
17 copy of Hursti’s report is included in the Appendix as Exhibit 9.

18 77. Hursti’s successful manipulation of the AV-OS was made possible by flaws in  
19 the AccuBasic code that runs both the AV-OS and AV-TSx systems. As described below, a  
20 later study by the California Secretary of State’s own experts revealed that Hursti’s  
21 manipulation would work on the AV-TSx and that there were many other vulnerabilities in  
22 the AccuBasic code.

23 78. As recently as August 23, 2005, Diebold denied the existence of the security  
24 vulnerability discovered by Hursti. In an August 23, 2005, letter to Janice Brewer, Arizona  
25 Secretary of State, Diebold insisted that the AV-OS “does not make use of a machine-  
26 executable program stored, and implements no ability to execute any programs from a  
27 memory card.” A true and correct copy of the August 23, 2005 letter is included in the  
28 Appendix as Exhibit 10. In fact, as described below, a later study by the California

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1 Secretary of State’s own experts confirmed that the memory cards of both the AV-OS and  
2 AV-TSx could be used to “seize control of the machine” and “replace the running code on  
3 the machine . . . with code of the attacker’s choosing.”  
4

5 **III. DIEBOLD’S RENEWED EFFORTS TO ACHIEVE**  
6 **CERTIFICATION OF ITS VOTING SYSTEM.**

7 79. On March 18, 2005, Diebold applied for re-certification of a voting system that  
8 included a reconfigured version of the AV-TSx.

9 80. Steve Freeman, the Secretary of State’s technical consultant, recommended  
10 denial of certification on May 15, 2005.

11 81. Diebold later presented a different version of the AV-TSx, using firmware  
12 version 4.6.3, for state certification.

13 82. Wyle Laboratories—one of three vendor-sponsored laboratories which has been  
14 certified to test voting systems by the National Association of State Election Directors  
15 (“NASED”)—recommended the AV-TSx with firmware version 4.6.3 for federal  
16 “qualification” at some point before June 27, 2005.

17 83. On June 27, 2005, NASED deemed the AV-TSx with firmware version 4.6.3  
18 “qualified” and assigned it system number N-1-06-22-22-001.

19 84. Despite the federal qualification, testing by the Secretary of State’s office  
20 revealed serious problems with firmware version 4.6.3. For example, as described in an  
21 October 11, 2005 report by the Secretary of State’s office, printer jams destroyed several  
22 voting records. The system software was also defective, resulting in numerous shutdowns  
23 and the potential for loss or corruption of voting records. A true and correct copy of the  
24 October 11, 2005 report is included in the Appendix as Exhibit 11.

25 85. After examining AV-TSx with firmware version 4.6.3, the Secretary of State’s  
26 own panel concluded that “any system with failure rates this high is not ready for use in an  
27 election.” Ex. 11 at 5.

28 86. After discovering these problems in the NASED- and ITA-qualified system, the

1 Secretary of State suspended Diebold's application.

2 87. Diebold later presented firmware version 4.6.4 for state certification.

3  
4 **A. Security Concerns Are Raised At The Public Hearing On Diebold**  
5 **Certification.**

6 88. The Secretary of State held a public hearing on the AV-TSx, with firmware  
7 version 4.6.4, on November 21, 2005. A true and correct copy of the transcript of the  
8 hearing ("Nov. 21 Hearing Transcript") is included in the Appendix as Exhibit 12.

9 89. Several speakers at the hearing informed the Secretary of State that the AV-TSx  
10 contained "executable code." *See, e.g.*, Ex. 12 at 33:10-13, 35:23-36:5, 42:1-17.

11 90. When asked whether the system contained executable code, the Secretary of  
12 State's technical consultant, Steve Freeman, responded: "I'm advised I shouldn't answer  
13 that." *Id.* at 42:14-17.

14 91. In fact, Freeman had already acknowledged that the AV-TSx contained  
15 executable code in a November 11, 2005, report. *See* Secretary of State's November 11,  
16 2005, consultant's report ("Freeman Report") at 7 ("[The AccuBasic report files] are  
17 actually loaded into the memory cards for the AV-OS and AV-TS where their logic is  
18 executed."). A true and correct copy of the Freeman report is included in the Appendix as  
19 Exhibit 13.

20  
21 **B. After Another Successful "Hack" By Hursti, The California Secretary Of**  
22 **State Finds That Additional Testing Of The Diebold Voting System Is**  
23 **Needed As A Prerequisite To Certification.**

24 92. On December 13, 2005, security expert Harri Hursti repeated his May 2005  
25 "hack" showing that the presence of interpreted code in the Diebold voting system's  
26 memory cards made it easy to manipulate election results. Hursti had been invited by the  
27 Supervisor of Elections for Leon County, Florida, to test an AV-OS system under simulated  
28 election conditions.

93. By using an off-the-shelf memory card, Hursti was able to manipulate the voting